

REMARKS

1. The Examiner rejected Claims 1-20 under 35 U.S.C. §102(e) in light of U.S. Patent 6,536,659 to Hauser (hereafter "the '659 Patent"). Applicant believes the present invention claimed in the application predates the issue date of the '659 Patent precluding the use of this reference as prior art under §102(e). However, the Examiner rejects the contention absent supporting evidence. Applicant is therefore amending the claims to clarify the claimed invention and clearly distinguish the invention from the '659 Patent.

2. The Examiner required a new Abstract to be submitted.

ARGUMENT

I. THE REPLACEMENT ABSTRACT MEETS THE EXAMINER'S REQUIREMENTS

The replacement abstract is one paragraph and 147 words. The Examiner required a single paragraph not to exceed 150 words. The substitute abstract meets this requirement.

II. THE AMENDED CLAIMS DISTINGUISH THE INVENTION FROM THE '659 PATENT

The amended claims are distinguishable from the '659 Patent. The amendments clarify that the managed product items in the invention are unsold, inventory product items. None of the product items in the claimed invention have been sold and each is part of a remaining store inventory.

The Examiner rejected the claims of the invention under 35 U.S.C. § 102(e) for anticipation. However, the '659 Patent is for a method of handling returned merchandise that has been sold to a consumer. Unsold product is not part of the methodology in the '659 Patent. In fact, the products handled in the '659 Patent are the opposite of "sold" because they left the store's inventory through a consumer sale or purchase. Because the '659 Patent does not suggest, teach, or disclose any method for handling unsold product, the '659 Patent cannot support a § 102(e).

The Examiner discussed the rejection and the '659 Patent with counsel on August 22, 2005 in a conference call and agreed that the '659 Patent was directed to a system for handling returned merchandise after it left the store inventory through a sale or purchase. Because the '659 Patent relates only to sold product, claim 8 stands as allowable as

initially claimed and the remaining claims, as amended, are allowable over the '659 Patent because only unsold inventory is being managed in the claimed invention.

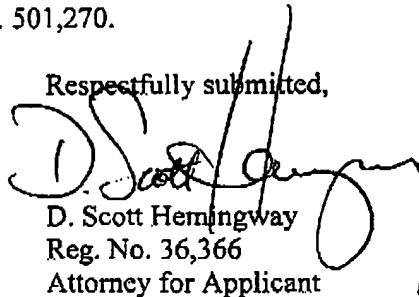
While the Applicant believes that the invention predates the '659 Patent, the Applicant is further aware that supporting evidence is required. Applicant is continuing to review records for supporting documentation and reserves his right to submit further evidence at a later time that the invention predates the '659 Patent. However, there is no argument that the invention is directed at a method for managing unsold inventory, and the amended claims clarify that the claims and the invention do not include sold merchandise.

III. CONCLUSION

The amended abstract corrects the deficiencies noted by the Examiner. The amended independent claims 1, 8, and 15 clarify that the invention is for a method of managing unsold product inventory store and are allowable because the '659 Patent fails to disclose, teach, or suggest all the claimed elements. Since the dependent claims add further limitations to the allowable independent claims, the Applicants believe the dependent claims are likewise allowable. Accordingly, the Examiner's 35 U.S.C. §102(e) rejection should be traversed and pending claims 1-20 allowed.

It is believed that no additional fees are necessary for this filing. If additional fees are required for filing this response, then the appropriate fees should be deducted from D. Scott Hemingway's Deposit Account No. 501,270.

Respectfully submitted,



D. Scott Hemingway
Reg. No. 36,366
Attorney for Applicant

Hemingway, LLP
460 Preston Common West
8117 Preston Road
Dallas, Texas 75225
(214)292-8301 (voice)
(214)739-5209 (fax)